



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF JULY 15, 2010**

CALL TO ORDER: Chairperson Lorenz called the meeting to order at 7:05 p.m.

Chairperson Lorenz called for a Moment of Silence for two long-time city employees, Phyllis Kettering and Merv Murray, who had recently passed on.

Commissioner Lydon explained that Phyllis Kettering had been a clerk with the Police and Fire Departments and Merv Murray had been a Building Inspector.

PRESENT: Commissioners Bonaccorsi, Chugh, Lorenz, Lydon, Quan, and Sharma

ABSENT: None

STAFF PRESENT: Wayne Morris, Senior Planner
Scott Rennie, Senior Deputy City Attorney
Steve Kowalski, Associate Planner
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Jay Christiansen, Video Technician
Sarah Prudlhome, Sign Language Interpreter
Carson Ahalquist, Sign Language Interpreter

APPROVAL OF MINUTES: Regular Meeting, June 10, 2010 as submitted

DISCLOSURES: **Commissioner Sharma** spoke with Jack Rogers concerning Item 1.
Vice Chairperson Chugh also spoke with Jack Rogers and one other neighbor regarding Item 1.
Commissioner Quan also met with Jack Rogers and neighbors regarding Item 1.
Commissioner Lydon also met with Jack Rogers prior to last Council Meeting and he visited the sites of all items on the agenda.
Chairperson Lorenz and **Commissioner Bonaccorsi** had no disclosures.

CONSENT CALENDAR

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 2, 3, 4, 5 AND 6. ITEM 4 WAS TAKEN SEPARATELY AT THE REQUEST OF COMMISSIONER BONACCORSI.

IT WAS MOVED (CHUGH/SHARMA) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 2, 3, 5 AND 6.

- Item 2. OUR FATHER'S HOUSE – 42776 Albrae street – PLN2010-00210** – to consider a Conditional Use Permit (as per conditions of P-2008-122) for a 7,589 square foot religious facility to be located in the Industrial Planning Area. This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15303, Conversion of Small Structures.

CONTINUE TO AUGUST 26, 2010 TO ALLOW ADDITIONAL TIME FOR STAFF PROJECT ANALYSIS.

- Item 3. AHMED RESIDENCE – 1005 Sage Court – PLN2010-00217** – to consider a Finding for Site Plan and Architectural Approval for a new 5,638 square foot two-story home on a vacant lot located in the Mission San Jose Planning Area. This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15303, New Construction of Small Structures.

HOLD PUBLIC HEARING;

AND

FIND THAT PLN2010-00217 IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PER GUIDELINE 15303, NEW CONSTRUCTION OF MINOR STRUCTURES;

AND

FIND THAT PLN2010-00217 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE LAND USE AND HOUSING CHAPTERS OF THE GENERAL PLAN AS ENUMERATED WITHIN THE STAFF REPORT;

AND

APPROVE PLN2010-00217 AS SHOWN IN EXHIBIT "A", BASED ON THE FINDINGS AND SUBJECT TO THE CONDITIONS CONTAINED IN EXHIBIT "B".

- Item 5. SORAA HAZMAT CUP – 6500 Kaiser Drive – PLN2010-00240** – to consider a Conditional use Permit to allow a High Intensity Hazardous Materials use to occupy an existing industrial building located in the Northern Plain Planning Area. This

project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15303, Minor Alterations to Existing Structures, and Guideline 15311, Accessory Structures.

CONTINUE TO AUGUST 26, 2010 TO GRANT APPLICANT ADDITIONAL TIME TO COMPLETE RISK MANAGEMENT PLAN REVIEW PROCESS IN ACCORDANCE WITH STATE AND FEDERAL PROCEDURAL REQUIREMENTS.

- Item 6. T-MOBILE WIRELESS NILES – 41 Nursery Avenue- PLN2010-00253** – consider an amendment to previously approved Conditional Use Permit (PLN2007-00129) to allow construction of a monopine and equipment enclosure at a different location on the same parcel located in the Niles Planning Area. A Mitigated Negative Declaration was previously prepared and circulated for this project pursuant to the provisions of California Environmental Quality Act (CEQA).

CONTINUE TO AUGUST 26, 2010 AT APPLICANT’S REQUEST FOR THE PURPOSE OF EVALUATING OPTIONS.

The motion carried by the following vote:

AYES:	6 – Bonaccorsi, Chugh, Lorenz, Lydon, Quan and Sharma
NOES:	0
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

IT WAS MOVED (CHUGH/SHARMA) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NUMBER 4.

- Item 4. FREMONT HEALTHY SPA – 43779 Bosc cell Road – PLN2010-00227** – to consider a Conditional Use Permit to allow a 1,446 square foot full-service Massage Spa facility within an existing retail building located in the Industrial Planning Area. This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15303, Conversions of Small Structures.

Commissioner Bonaccorsi recused himself, because the owner of the facility was a client.

HOLD PUBLIC HEARING;

AND

FIND THAT PLN2010-00227 IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PER GUIDELINE 15303, NEW CONSTRUCTION OR CONVERSIONS OF SMALL STRUCTURES;

AND

FIND THAT PLN2010-00227 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE LAND USE AND LOCAL ECONOMY CHAPTERS OF THE GENERAL PLAN AS ENUMERATED WITHIN THE STAFF REPORT;

AND

APPROVE PLN2010-00227 AS SHOWN IN EXHIBIT “A”, BASED ON THE FINDINGS AND SUBJECT TO THE CONDITIONS CONTAINED IN EXHIBIT “B”.

The motion carried by the following vote:

AYES: 5 – Chugh, Lorenz, Lydon, Quan and Sharma
NOES: 0
ABSTAIN: 0
ABSENT: 0
RECUSE: 1 – Bonaccorsi

PUBLIC/ORAL COMMUNICATIONS

PUBLIC HEARING ITEMS

- Item 1. JAI MONTESSORI CENTER - 4004 MATTOS DRIVE - PLN2008-00223** - to consider a Conditional Use Permit allowing the conversion of an existing residential use into a commercial preschool and day care facility for up to 45 children. This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15303, Conversion of Small Structures.

Commissioner Bonaccorsi recused himself, because he had an attorney/client relationship with a representative of the applicant.

Chairperson Lorenz also recused himself, because he owned a residential property within 500 feet of the proposed project. He turned the meeting over to **Vice Chairperson Chugh**.

Senior Planner Morris clarified that the Commission was to decide upon a request for a Conditional Use Permit (CUP) to allow the conversion of an existing legal nonconforming residential use into a conforming commercial use, based on the findings specified in Section 8-22509. The amended exhibit that was distributed to the Commissioners showed an adjusted parking space, which would be reflected in the conditions. Also added were two Informational items that included an email received by staff and the minutes from the Commission's January 28th Public Hearing.

Vice Chairperson Chugh asked what had changed since the last hearing.

Senior Planner Morris stated that the daycare enrollment had been decreased from 65 to 45 students. Previously, not all eight required parking spaces were onsite. With the decreased number of students, six parking spaces were now required onsite. The existing building would also shrink in size.

Vice Chairperson Chugh explained the hearing process to the public.

Senior Deputy City Attorney Rennie added that a parking variance had been required with the original application to allow a reduction in parking spaces. That finding was no longer necessary. At this time, only the CUP permit for the conversion of the non-conforming residential to conforming commercial use was to be considered.

Commissioner Sharma asked if a finding regarding Floor Area Ratio (FAR) would need to be considered or was it just the parking that did not have to be considered.

Senior Planner Morris replied that the FAR was not part of the hearing last time. The nonconforming FAR would not be increased; therefore, it would not be an issue.

Commissioner Sharma recalled that the FAR had been a part of the parking issue.

Associate Planner Kowalski stated that a nonconforming FAR existed as the structure was currently developed.

Vice Chairperson Chugh added that it was legally nonconforming.

Associate Planner Kowalski agreed. The lot was legally nonconforming in every aspect. In theory, someone could convert this building into an office if parking, setbacks, and the like, were met. This was a nonconforming situation that would actually be improved by the applicant by shrinking the size of the building, which was not a requirement. The FAR would not have to be brought into compliance unless the building was demolished in its entirety and a new development was constructed on this site.

Dominic Dutra, applicant's consultant, stated that legal counsel was sought after the last hearing as to what the applicant's rights were. They had met with staff prior to purchasing the building and had offered a design. The only variance was for the two parking spaces. They were advised that the only legal finding for denying this project would be the parking. Their only legal requirement to convert this building was to make certain that every legal requirement relative to the zoning code was met. That had been done by reducing the size of the building and providing for all parking to be onsite. The number of students had also been reduced. He introduced owner **Sophia Jai**, teacher **Heather**, and parent **Jaime**.

Sophia Jai, owner, stated that she had purchased the property over three years ago with the intention of setting up an international immersion Montessori Preschool for

English, Chinese and Spanish languages. The City's Planning Department was consulted and their answer had been positive. The Jais then purchased the building and hired an architect to redesign the interior and exterior to meet her standards and philosophy, as well as the neighbors' concerns. Unfortunately, their proposal failed due to opposition from the neighbors. She believed this project represented goodwill towards the community and it was supported by the Childcare Council of Alameda County and the Childcare Planning Council of Alameda. This strong opposition was coming from the people in the area who did not need childcare. She thanked all of the parents and neighbors who supported this project. The neighbors' issues included:

- Traffic – The city Traffic Engineer Department had stated in the LOS report that there would be no impact. However, this report was not accepted by the people who opposed the project. She was then forced to hire an independent traffic engineer to reexamine the traffic impact. The result came back the same.
- Noise – An acoustics study was performed to evaluate the potential noise and the analyst reported that the noise from the preschool/daycare facility would meet the code.
- Quality of the Program – As a member of the community, as a parent, and as an educator, she vowed to provide quality daycare. She promised to carry out this promise through her everyday actions, as she had for the past ten years. She believed that her team would positively impact her students and their families.

Heather Clark, San Jose resident, addressed the social impact of this school pertaining to its philosophy and the demand for-quality education for preschool children. The larger site would service the needs of the community and benefit the economy and value of the neighborhood. She had witnessed the growth of the curriculum and philosophy of the school since it had opened ten years ago. Her mother had worked for the Jai's and she had been encouraged to improve her skills by exploring various teaching methods and continuing her education, as had she. This was refreshing, as many daycare facilities emphasized the financial side of the business rather than the educational opportunities. She saw happy children who were performing at or above their predicted developmental level. All of the graduating students had scored very high on the Kindergarten Readiness Test. The multilingual education benefited how children would learn and solve problems throughout the course of their life.

Vice Chairperson Chugh announced that the third speaker had 30 seconds to make some quick comments, as the total ten minutes speaking time allotted for the applicant had elapsed.

Jaime Koo, parent and teacher, stated that she taught at a middle school and she knew the fundamental principle of this preschool created a foundation for a successful child. She supported this project.

Vice Chairperson Chugh opened the Public Hearing.

Carol McIlwain, Glenmoor Neighborhood, recalled that the original 65-student daycare at the corner of Mattos Drive and Fremont Boulevard had been proposed in late January and it was unanimously rejected at that time. The applicant had appealed the decision to the City Council where it was rejected by staff. Now the applicant was again before the Planning Commission with a request for a 45-student daycare center. However, the cosmetic structural changes would not address the fundamental problems that continued to exist. The neighbors contended that this project fell far short. The addition of 200 daily auto trips at this intersection would create gridlock. Onsite parking would be inadequate and on street parking was negligible. The proposed pick-up and drop-off protocols would not be executed to any degree of success on a regular basis. With this facility located tightly within the community, they were concerned about the additional noise that would be generated and the feeble attempt made to address it. The proposed play-yard would be steps away from the busiest streets in the city. The need for an additional childcare preschool facility in the area had not been demonstrated in the still struggling economy. This project was too large for a 13,000 square foot lot. While this lot was zoned commercial, the area was almost exclusively residential and it was not designed for a business that demanded ample, onsite parking for the safety and convenience of their young clients. The neighbors' opposition was not related at all to the program or the curriculum or the Jais. It was the inadequacy of the facility and site that they were opposed to.

Cindy Mozzetti, former 17-year Commissioner, stated that she was a lifetime resident of Fremont and a 15-year resident of Glenmoor. She noted that everyone in attendance who was opposed to this project was wearing green ribbons. The General Plan goals that needed to be taken into consideration when deciding this project were:

- Housing Goal H1, Conservation and enhancement of existing residential neighborhoods and preservation of neighborhood integrity – This project did not fulfill this goal.
- Policy Land Use 1.1, Residential Design and Development Policies stated, “Appropriate transitions shall be encouraged between higher density residential areas and lower density areas and between commercial areas and residential areas. Transitions can be composed of streets, setbacks, open space, landscape, site treatment, building design and other techniques.” – If this finding could not be made, the project must be denied.

A 45-student daycare center would go against the above General Plan goals and policies. There were 50 daycare sites within five miles, 30 sites within 2.5 miles and 9 sites within one mile. She asked that this application be denied.

Vice Chairperson Chugh asked if this proposed use was consistent with the General Plan.

Ms. Mozzetti did not agree. She did not like that this nonconforming residential site would become nonconforming commercial. When would it ever become conforming?

Curt Gajda, neighbor who lived two blocks away, stated that even if all of the boilerplate requirements were met, taking a common sense look at the site would be revealing. The site was dramatically smaller than any of the other numerous similar-enrollment childcare facilities in the city. Parking and playground space was much more limited. To meet the parking requirement, the front part of the building would be removed. The parking requirement for a 45-student daycare was six. However, a common sense approach would take into account the needs of parents, 8 to ten staff (in two shifts) and deliveries. With one of the six available spaces reserved for handicapped, where would the parents park when they needed to visit? Public on-street parking could not be reserved for this purpose and he reminded the Commission that this neighborhood was the only place in the city that had public parking restrictions due to congestion in the area. This application should be denied, because the project could not meet this finding.

Renee Smith, 42-year Mattos Drive resident, spoke about safety and general welfare of the students and neighbors who resided in the immediate vicinity. A six-foot wooden fence would be erected along the Fremont Boulevard side of the lot for the outdoor playground. Vehicles had been known to drive up on that curb and accidents had occurred when vehicles had not been able to complete the U-turn. Her children had never been allowed to play in the front yard, because of the heavy traffic or the speed of the traffic on Mattos Drive. A nine-foot wall was planned behind the school. It and the new fence would make it difficult for drivers on Fremont Boulevard right next door to the property to get out of the driveways onto Fremont Boulevard. The wall would also cut down on the light for the woman who lived behind this property. The wall was required based on the sound study. However, the study was based upon students in the front play area, another ten students adjacent to the duplex and two or three in the alleyway between the building and the rear neighbor's property. Since the restrictions were to be removed, it seemed to negate the sound study. Would a nine-foot sound wall be efficient for 23 toddlers and preschoolers playing outside for two hours over the course of the day? The wall would not be aesthetic, the fence would not make an attractive entrance into the neighborhood, as open space usually felt more welcoming. As a Kindergarten teacher, she was concerned about evacuation in case of fire or earthquakes. Potential post-earthquake hazards outside of a building were power lines, trees near the building, and falling debris. Students should be removed to an open space away from building, fences, trees, tall playground equipment, lights and overhead power lines. The applicant's drop-off and pick-up procedure described an orderly process. In her experience, parents could not be counted on to follow proper and safe procedures, especially when they were in a hurry, running late and needed to get to work on time. It was difficult to envision an orderly process when the driveway was so close to Fremont Boulevard.

Jack Rogers believed the proposal fell short in some areas of the zoning ordinance, along with the building and fire codes. It would not meet the minimum parking requirements. It would provide one illegal handicapped space and five substandard spaces. It would not meet the federally mandated ADA parking requirement. The minimum 10-foot landscape buffer would not be met by the proposed six-foot

landscaped planting area. An intense landscape screening wall within this buffer was not part of the current plan. The FAR was over the city's code by 17 percent. Where was it written that staff was allowed to waive this requirement? This would be an illegal nonconforming development. Finding (f) could not be made, because of the above discrepancies.

Vice Chairperson Chugh asked he had spoken with city staff about his concerns. If so, what was their response?

Mr. Rogers stated that he had not had a clear response regarding the FAR or the ten-foot buffer area. He had in hand the Commercial and Industry Development Standards that stated that the minimum landscape yard between street and parking should be ten feet.

Robert Lindley, a student's grandfather, said that the tri-lingual, tri-cultural program offered at the Jai School was very important to his family, since it described the ethnic makeup of his family, English, Mexican, Chinese. The expansion to this site would provide a great value to the city. He was puzzled at the conflict between the staff and the neighbors. The current site was now a nonconforming residence which was to be converted to a conforming commercial building. This site was on the periphery of this neighborhood. It was adjacent to a very busy commercial street. It would be an improvement for the neighborhood, the commercial district and the city.

Commissioner Sharma asked if the speaker believed that the curriculum offered at the school was good for the city only if it was offered at the Mattos site.

Mr. Lindley replied that this was originally a Commercial zoned site.

Commissioner Sharma questioned why this project was before the Commission if that was the only issue.

Senior Planner Morris clarified that the property was zoned Commercial. In the General Plan and Zoning Ordinance, it was designated Commercial at this time. It was not zoned Residential today. The legal, nonconforming residential use would be converted to a legal conforming commercial use. The CUP was needed to perform this conversion, which was a unique situation that had not been seen before.

A discussion ensued among **Commissioner Sharma**, **Senior Planner Morris** and **Senior Deputy City Attorney Rennie** concerning why this project had to be approved by the Planning Commission if the property was already zoned Commercial.

Senior Deputy City Attorney Rennie also clarified that the Commission was not to look at the appropriateness of the use or any operational conditions related to the particular use, but to consider the conversion of the structure from a nonconforming residential use of the structure to a conforming commercial use. The focus was on the

structure, along with the physical layout and configuration of the property, not the particular commercial use that was intended for the property. The use, itself, was not part of the conversion. This proposed commercial use was already allowed under the Commercial zoning.

Elisa Lindley, grandmother of a student, addressed the comments made about noise and parking and how people behaved. She sometimes approached the school unannounced and she had never heard noise until she came to the backyard when laughing and playing could be heard. She had never seen any other person disregarding others while picking up or dropping off her granddaughter. If some other type of commercial business came into this building, it would most likely operate seven days a week and noise and parking would not be relegated to a few hours a day during the week. She proudly supported this school

Vice Chairperson Chugh asked for the speaker's address.

Ms. Lindley stated that she lived in San Jose.

Vice Chairperson Chugh called for a recess for the stenographer at 8:02 p.m.

Vice Chairperson Chugh reconvened the meeting at 8:12 p.m.

Maria Rogers, lived off Mattos Drive, she stated that the Citizens Group had been worried about this project for almost two years. She was disturbed that city staff had not notified them of a change in interpretation of how the Conditional Use Permit should be applied, since the staff was aware of their concerns. A great deal of distrust had been created towards staff, because staff should be providing support to both the developer and community. Originally, the Conditional Use Permit had applied to the daycare use, specifically. Now, it applied to the commercial use of the site and seemed to negate all specific conditions that would apply to the daycare center. Not discussed were the parking attendant, more than 45 students, and control over open houses and special events. She still wondered how children as young as 18 months could be taken out of the building to a safe place when there was an emergency. She expected that children would be dropped off by parents who would park across Mattos Drive from the building with the possibility of a child being hit by a vehicle that was coming around the corner from Fremont Boulevard.

Tom Gent, Mattos Drive resident, stated that what had not been discussed was the displacement of three families from the building in question. Two of the families were headed by single parents. This building had been home to all of the families. What about the people who will be displaced and their concern about finding new housing? This was a congested intersection with many children going to and from the local schools.

Alfonso Lopez, one-year Sunol resident, stated that he owned a house in Fremont. He addressed the opposition's concerns:

- He questioned that 200 extra car trips per day would be generated by this preschool, when considering two trips for each of the 45 students and six staff members. Many of the children would be siblings.
- When it came to the congestion, not all of the children would be arriving at the same time, unlike public school. He picked up his children at the preschool's current location at 5:00 o'clock and of the 10 or 15 children still there, he saw a maximum of two parents with the daycare staying open until 7:30 p.m.
- Regarding noise, the children's outdoor time was split at the current daycare location, so not all of the children would be outside at the same time. Had any one considered the noise from the traffic traveling on the nearby major thoroughfare? Was it louder than the children would be? Was it more pleasant? He did not believe it was.
- Yes, 50 daycares were a lot, but what was not addressed was the quality or content of those daycares.

His family was also multicultural, Mexican-American and Chinese, and they had searched for a long time before they found Jai. After a year in the Pleasanton area, they had finally found a similar preschool to which their Kindergartener would attend, but their two and one-half year old son would continue to attend Jai. He believed it would be worth the sacrifice in time and money for his youngest son to continue to attend Jai's school.

Commissioner Lydon asked where the Jai Preschool was currently located.

Mr. Lopez stated that the current location was off of Mission Boulevard on McDuff.

Glen Hawkins, Mattos Drive resident, stated that he also owned another home on Mattos Drive across the street from his residence and his brother lived on Fremont Boulevard, just three doors down from the corner of Mattos Drive, which was also a commercial property. He was aware of three dogs being killed within the last three months on Fremont Boulevard. Parking was very difficult throughout the day and sometimes people picking up their children from Centerville were parked across his driveway. "And they want to add 45 more people to that street? Come on, this is getting to be a little bit too much." That corner was not safe.

Leo Hinkel, Mattos Drive resident, said that the applicant's consultant had purchased the apartment building some years ago at a high price. Today, that same property had a much lower value and it could not be sold at a loss (sic). If the property was able to be sold at its original price at this time, this school would be looking for another location and this meeting would not have occurred. He believed that the applicant's consultant had not questioned the neighbors about their opinions about a preschool being located in his building.

Eric Lindley, Fremont resident, stated that his daughter attended this unique program. His three-year old daughter was able to carry on a conversation in both Mandarin and English at the same time. They never dropped off their daughter from

across the street and allowed her to run across to the school. The Jai teachers took care of the children and, due to the staggered process when picking up the children, there would be no congestion problem. Noise from the children could not be heard when approaching the school. He had complete faith in Ms. Jai and this school and believed its programs would be a benefit to the community.

Michelle Gent, Mattos Drive resident, said that she had resided in this triplex for about five years and had attended junior and high schools in the area. The preschool sounded like a great school; she also had studied foreign languages in high school. But the corner of Fremont Boulevard and Mattos Drive was very congested and she had experienced close calls from vehicles while walking home from school. The neighbor behind her had told her about three incidents of autos rolling up on her property and through her fence. The neighborhood was quiet and the only noise was from the traffic on Fremont Boulevard. She wondered how the triplex she lived in could be turned into a daycare center. She agreed that the parking situation was difficult. Neighbors further down the street often parked in front of the triplex and there was room for about four cars in the parking garage. She asked that thought be given to the displacement of the three families now living in the building.

Janice Webster, resident on the corner of Fremont Boulevard and Mattos Drive, stated that she could look straight across Mattos Drive from her kitchen window. Many times she had seen students from the local schools almost being hit by vehicles coming around the corner. She was concerned about young ones also being in the same unsafe environment. She did not believe that Mattos Drive could accommodate any more vehicles, such as the parents of the preschool students. The wonderful program was not the issue. The issue was the safety of the surrounding environment. She also mentioned the displacement of the three families currently living in the building.

Vice Chairperson Chugh explained to **Ms. Koo** that she could not speak twice.

Mr. Dutra closed by emphasizing that the proposed use of this building by Ms. Jai would be a tremendous use. This site had been commercially zoned since 1983. Contrary to previous comments, this site already conformed to the General Plan with childcare being a permitted use on this site. The only issue was the changing of a residential structure to a legal conforming commercial structure. None of the \$70,000 that the Jai's had spent so far had been paid to him. He was acting as an unpaid consultant, but he had received a commission for the sale of the building to the Jais. The two community meetings, the three traffic reports and the sound study had all been conducted to demonstrate the appropriateness of this project. The Jais had done everything right. After consulting with an attorney who served on a Planning Commission in another major city, they were advised that they had done everything right. Then it was decided to reduce the size of the structure to be certain that all required parking would be handled onsite. The comment made earlier about staff rejecting an appeal to the City Council was untrue. They were legally advised to

revise the design, and they did. This project had become a legal issue. Every code and ordinance had been met.

Vice Chairperson Chugh asked the following question of the speaker:

- Did he believe the only reason that this project could have been denied at the earlier hearing was because of the request for the parking variation?
He agreed that the original design had not met the strict conversion requirement that involved parking, which was why they had decided to revise it.
- Did he believe this project met the test for this use at this location?
He knew this project met the test.
- Did he believe the objections from the neighborhood were unwarranted?
When they start talking about traffic and this use, three different traffic studies were performed that concluded there would be no impact. The left-turn issue at the corner of Fremont Boulevard and Mattos Drive had nothing to do with this project, but it had everything to do with the growth of the city.

Vice Chairperson Chugh closed the Public Hearing.

Vice Chairperson Chugh asked for clarification on the following issues:

- What were some of the issues that the Commission needed to take into account as a part of its decision? What were the key issues? Why was this Conditional Use Permit different from the usual Conditional Use Permits that came before the Commission?

Senior Planner Morris explained that the findings should involve the structure and the site layout. When looking at the findings on page 5, the words "The proposed use" should have been replaced with "The conversion," which would then read, "(a) The Conversion is consistent with the General Plan" and "(b) The site is suitable and adequate for the conversion," and so on. The decision involved deciding if a residential use should be converted to a commercial use, which, in this instance, could only be done through a CUP.

The permitted uses under the Commercial zoning ranged from child dance schools to finance to general office to childcare and social services. In other CUPs that had come before the Commission, the particular use was not permitted except as a Conditional Use. This proposed use was permitted.

- Did this restrict the Commission's authority even more?
Yes, it did restrict the Commission's ability more.
- He agreed with **Commissioner Sharma's** previous question concerning why this was even before the Commission if this use was already permitted?
Because the conversion of the structure and project before the Commission conformed to the General Plan, conformed to the use, conformed to the site design, etc.

Senior Deputy City Attorney Rennie used as an example some of the single-family homes in the city that had, over time, been allowed to be used for

businesses, because of zoning changes. The question was how to convert this structure to accommodate the new allowed commercial use. This Conditional Use review was related to the conversion of the structure, only, from residential to commercial use, which was a much more narrow scope than was usually seen with CUP reviews.

- The original project came to the Commission at a much larger size. *Yes, and the larger size required the consideration of allowing a reduction in the parking requirement. The Conditional Use Permit was a discretionary approval. However, the approval should be based only on converting this structure to a commercial activity. If there were concerns, they should be the kind of concerns that could be rectified by adjusting the site layout and design. The decision should not hinge on whether a commercial use was appropriate for the site.*
- Was that because it had been determined that it was? This was a nonconforming residential use and the zoning was already commercial and the idea was to make this structure a conforming commercial use. *There were three aspects of nonconformance: 1) A nonconforming use of land, 2) A nonconforming use of a structure, and 3) Nonconforming structures. This was a nonconforming structure and it was a nonconforming use of the land, because it was being used as residential although it was supposed to be used for commercial purposes. The CUP conversion would address the nonconforming use of land aspect by aligning it to the zoning in the current General Plan designation. The code allowed a nonconforming structure to remain indefinitely in its original condition, except as provided otherwise in the article. A nonconforming structure could not be enlarged or altered in any manner that increased the degree of nonconformity. This was what staff had alluded to earlier.*

Commissioner Sharma stated that he still had an issue with it. It seemed that the Planning Commission had no choice, so why was this before the Commission. However, the Commission had to make Findings (a) through (f) to approve this CUP and he could not agree with Finding (e) “The proposed use would not be detrimental to the general welfare...” He stated that his concern was not about the school, its curriculum, the children or the parents. He was concerned about the location and it seemed that he was being told that some of the Findings were irrelevant.

Senior Deputy City Attorney Rennie stated that the Findings list was a generic list of findings for a generic Conditional Use Permit. This CUP was being considered only for the conversion of the structure. The list should have used the words “The proposed conversion” rather than “The proposed use” to understand the focus of the finding that needed to be made. Each finding should be analyzed with a narrower perspective than was usual with a CUP. Only the conversion of the structure was to be considered when analyzing each finding.

Commissioner Sharma asked if he could decide to leave the structure the way it was as residential.

Senior Planner Morris replied that the zoning was not residential; the zoning was Community Office C-O, as it was in the General Plan. The previous Council and Planning Commissions had determined that commercial land use was appropriate at this location. The vision for Fremont saw a commercial use at this location.

Commissioner Sharma could not justify changing this use. Building a fence six feet from Fremont Boulevard was not an improvement of a commercial property and children would be put behind the fence. The high school traffic and daily commuting presented a safety and neighborhood impact issue.

Vice Chairperson Chugh asked **Senior Deputy City Attorney Rennie** to address the path the Commission might be treading on.

Senior Deputy City Attorney Rennie said that if safety was a concern, it had to be on the subject of the structure and about the nature of the conversion, not whether the structure was appropriate for a particular use such as a daycare. Nonconforming structures were allowed to continue indefinitely. However, the code contemplated that nonconforming use of land would eventually come to an end.

Commissioner Quan understood that six total parking spaces were required. Were the parking spaces required to be onsite or did they have to be elsewhere.

Associate Planner Kowalski recalled that at the last hearing, eight spaces were required and the applicant was only able to provide six standard spaces with staff agreeing to using the queuing area for addition parking. The Commission chose not to accept that. Since then the applicant had shrunk the enrollment by 20, which meant that two less spaces were needed, which would be accommodated by the site plan revision. The current proposal complied with the parking requirement.

Commissioner Quan asked if the city considered the queuing spaces as parking spaces.

Senior Planner Morris answered that was not in this evening's proposal. All six parking spaces would be located outside the queuing area.

Commissioner Lydon stated that in order for him to move from the position he had taken at the last hearing, he would need to have some compelling and convincing arguments for this proposal. He still had the same concern about safety. However, according to **Senior Deputy City Attorney Rennie**, was the Commission to focus on the conversion and not the proposed use?

Senior Deputy City Attorney Rennie replied that he was correct. The action before the Commission was how to make the conversion of the structure work on the site and not the use of the structure after the conversion. If this structure had already been converted to Commercial use, the daycare would be a permitted use and it would not have come before the Commission.

Commissioner Lydon said that it was no secret that this intersection was “a horribly difficult intersection.” It was not on McDuff where the school was flourishing at the present time. Regarding the 200 trips/day, he learned that when a car with a student leaves the roadway, goes onto the property, deposits the student and leaves, it was considered two trips, because of it coming on and off a city street. When it factored out, almost 200 more interactions would occur that intersection that did not exist currently. In his mind, case closed. Was he being told that he could not consider what he saw as emerging safety concerns if this application should go forward?

Senior Deputy City Attorney Rennie reiterated that safety concerns needed to be focused on the nature of the conversion of the structure, itself, and not the fact that a daycare or some other commercial use would use the structure.

Vice Chairperson Chugh reminded the public to show some decorum while staff and the Commissioners discussed this item and to not interrupt the proceedings again.

Commissioner Lydon said that it was a perplexing situation that the city would have to live with. He would accept that ruling, although it was upsetting.

Commissioner Sharma said that he found that a conversion would be detrimental to the general welfare [(Finding (e))].

Commissioner Quan asked if the Commission was confined to consider this conversion based upon whether the use as commercial space was appropriate for a preschool.

Senior Deputy City Attorney Rennie replied that the property was allowed to convert from residential to commercial. The question was that what should happen to the property to make it suitable for commercial from the condition in which it was currently. Not whether it should convert to a commercial use but how it should convert to a commercial use.

Commissioner Quan asked if it was the use that was in question.

Senior Deputy City Attorney Rennie said, no, it was how the structure could be converted to a commercial use. The focus of the requirement was the conversion of the structure.

Commissioner Sharma understood the zoning was Commercial Office C-O and the uses that were allowed within that zoning.

Senior Planner Morris stated that he was correct.

Vice Chairperson Chugh called for a recess for the stenographer at 9:08 p.m.

Vice Chairperson Chugh reconvened the hearing at 9:18 p.m.

Commissioner Quan understood that the Commission must evaluate whether the proposed use as a commercial facility was appropriate.

Senior Deputy City Attorney Rennie clarified that it was not whether the structure should convert to a commercial use but how it should convert to a commercial use.

Vice Chairperson Chugh asked the following:

- Parking – Although he understood that this issue was probably out of the scope of the Commission’s review, a previous speaker believed that the approved parking appeared to be substandard, including the ADA parking.
Senior Planner Morris said that it met the city’s requirements. The Chief Building Official had participated in the discussion concerning the accessible parking space and the proposed parking met all the provisions of the Municipal Code.
- His first reaction had been that it did not meet the parking code. Was that because it was different from what would be required for a new development?
Senior Planner Morris stated, again, that the Chief Building Official was fine with the ADA parking stall.
Associate Planner Kowalski added that stricter rules applied to new development when a new commercial building was built on an empty lot. When an existing building was being retrofitted, more latitude was given to the Chief Building Official.
- A clear concern had been expressed about the viability of this specific daycare at this existing location. It seemed that there was not much that the Commission could do, based upon what staff had said. The Commission had always focused on how a project would impact the neighborhood. In five different ways, staff had told the Commissioners that they would have to ignore that. He asked if staff was stating the structure was zoned commercial and being used as nonconforming residential and that was what the Commissioners were being asked to approve. The question was, did the structure meet the conversion to C-O Commercial?
Senior Planner Morris said that he was correct.
- Then why had this item been brought before the Commission?
Senior Planner Morris suggested that staff should have included the Municipal Code page that stated when there was a conversion from residential to commercial in the C-O District, it must be done through a CUP.
- Why then had there been two hearings and endless hours spent talking about the neighbors concerns?
Senior Deputy City Attorney Rennie stated that the Commission could look at the conversion of the structure, as proposed, and decide it was not the best way to make this structure a commercial structure. The focus should be about any concerns as to how it was being done, not on the fact that a daycare was proposed for the site after it was converted.

Commissioner Sharma reiterated that his motion was made to address the issue of the location being the best use for this school and the neighborhood.

Commissioner Quan asked if the Commission could assess whether the commercial use of that space was appropriate for that location. Whether the commercial use in that area would be appropriate. Whether the school with 45 children and six parking spaces would be appropriate for that use.

Senior Deputy City Attorney Rennie said that the use of the existing structure for any commercial activity was to be considered not specifically a school or a daycare. Only the conversion of the structure should be considered. Not whether the site should become commercial, but how it became commercial. The commissioners should focus on how something had to do with the site. If there was something about how this site/structure was being proposed for commercial use and a Commissioner did not believe it fit within the parameters of the findings, that was what should be focused upon. Not whether it should be commercial but how it was becoming commercial.

Associate Planner Kowalski added that if a Commissioner felt that the site was unsafe, the General Welfare Finding could be used to deny this application. However, a reason must be given for making that finding.

Senior Planner Morris understood **Commissioner Sharma's** reason for making the motion to deny the application was Finding (e).

IT WAS MOVED (SHARMA/LYDON) AND CARRIED BY THE FOLLOWING VOTE (3-1-0-0-2) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

DENY THE STAFF RECOMMENDATION OF THE CONDITIONAL USE PERMIT TO ALLOW CONVERSION OF EXISTING RESIDENTIAL USE TO COMMERCIAL USE, BECAUSE IT WOULD BE DETRIMENTAL TO THE GENERAL WELFARE, AS EXPRESSED IN CONDITION (E).

The motion carried by the following vote:

AYES: 3 – Lydon, Quan and Sharma

NOES: 1 - Chugh

ABSTAIN: 0

ABSENT: 0

RECUSE: 2 – Bonaccorsi and Lorenz

Senior Planner Morris announced that the applicant had 10 days to appeal this decision to the City Council.

Chairperson Lorenz assumed the chairmanship of the rest of the meeting.

DISCUSSION ITEMS

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.

Senior Planner Morris announced that the next Planning Commission meeting would be held on August 26th and the Planning Commission's official photo would be taken.

- Report on actions of City Council Regular Meeting

None.

- Information from Commission: Commission members may report on matters of interest.

Chairperson Lorenz asked **Commissioner Sharma** if he had any news to announce.

Commissioner Sharma announced that he was now the President-Elect of the Niles Rotary Club.

Commissioner Bonaccorsi announced that a six-week effort was under way to raise funds for the school district by the Fremont Education Foundation. Affiliated parents had formed a volunteer organization called Save Fremont Students and had raised nearly \$400,000 for the schools.

Chairperson Lorenz announced that the 27th Annual Fremont Festival of the Arts would be held July 31st to August 1st.

Meeting adjourned at 9:35 p.m.

SUBMITTED BY:



Alice Malotte
Recording Clerk

APPROVED BY:



Wayne Morris, Secretary
Planning Commission